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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,129	07/31/2003	Douglas J. Habing	128/1130US	1830
22822	7590	08/21/2008		
LEWIS, RICE & FINGERSH, LC ATTN: BOX IP DEPT. 500 NORTH BROADWAY SUITE 2000 ST LOUIS, MO 63102			EXAMINER HWANG, VICTOR KENNY	
			ART UNIT 3764	PAPER NUMBER
			NOTIFICATION DATE 08/21/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/632,129	<b>Applicant(s)</b> HABING, DOUGLAS J.	
	<b>Examiner</b> VICTOR K. HWANG	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 34,35,38-44,47-50 and 57-66 is/are pending in the application.
- 4a) Of the above claim(s) 57 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34,35,38-44,47-50 and 58-66 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 May 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings were received on May 5, 2008. These drawings are acceptable.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 34, 35, 38-44, 47-50 and 58-63 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 34, 35, 38, 42-44, 47, 58, 59, 64 and 65 are rejected under 35 U.S.C. 102(b) as being anticipated by *Jones* (US Pat. 5,554,089). *Jones* '089 discloses an exercise machine 10 comprising: a frame 12; a resistance object 33; a bench having an essentially stationary seat portion 18 attached to the frame, the seat portion adjustable only in height; a first arm 20 moveably attached to the frame at a first pivot point 46 such that the arm traverses a fixed path about a first axis 26 permitted by the first pivot point, the first arm also being connected to the resistance object; a second arm 21 moveably attached to the frame at a second pivot point 47 such that the arm traverses a fixed path about a second axis 27 permitted by the second pivot point, the second arm also being connected to the resistance object; and at least two handle

locations on each of the arms. Note that the recitation of a handle location does not require a handle actually be located there. Therefore, any location along the arms can be considered a handle location. One of the handle locations on each arm of *Jones '089* includes a handle 34,35. The first axis 26 and the second axis 27 are not parallel to each other.

Weight holding hubs 30 and 31 are provided on the arms forward of the pivot points to selectively hold a desired number of weight plates 33. Selectorized weight stacks may be used in place of weight plates (col. 4, lines 52-56). Hubs 40 and 41 are provided on the arms rearward of the pivot points to selectively hold a number of weight plates to provide weight assistance during upward movement (pushing) of the handles 34,35, but can also be considered to provide resistance to the downward movement (pulling) of the handles 34,35, also referred to as inverted resistance (col. 5, lines 31-45). Resistance can be applied to the arms solely as inverted resistance (col. 7, lines 22-26). The first and second arms can each rotationally move independently of the other or they may be made to rotationally move dependently (col. 5, lines 8-19).

A user may be positioned on the seat portion 18 to face forward on the machine and can manipulate a handle 34,35 located at one of the handle locations on each of the arms to perform a push-type exercise resisted by the resistance object. A user may also be positioned on the seat portion to face backward on the machine and can manipulate a handle located at another of the handle locations on each of the arms to perform a pull-type exercise resisted by the resistance object. A user may be positioned in one or more of a number of positions, such as standing or kneeling (col. 4, lines 25-31). The push-type exercise comprises a converging exercise and the pull-type exercise comprises a diverging exercise.

A user may also be positioned such that the pull-type exercise comprises a converging exercise and the push-type exercise comprises a diverging exercise. Note that the forward and rearward directions as recited are relative and can be interpreted as satisfying the claim limitations as necessary. Additionally, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 40, 41, 49, 50, 62, 63 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jones* (US Pat. 5,554,089) in view of *Jones* (US Pat. 5,044,632). *Jones* '089 has been discussed above, and such discussion is incorporated herein. *Jones* '089 discloses the invention as claimed except for handles located at first and second handle locations on each arm comprising different handles (claims 40, 41 and 49), such that a first handle of a first set of at least two handles is attached to the first arm and a second handle of the first set is attached to the second arm and a first handle of a second set of at least two handles is attached to the first arm and a second handle of the second set is attached to the second arm (claims 50, 62, 63 and 66).

*Jones* '632 discloses an exercise machine comprising first and second arms 12,13 pivotal about first and second non-parallel axes 74,75. Each arm comprises at least two handles 14a,b and 15a,b that converge and diverge during rotational movement of the arms against an exercise resistance. The two sets of handles 14a and 15a, and 14b and 15b provides versatility in accommodating individuals of different heights, or for slight variation in the way that the muscles are exercised (col. 6, lines 63-67).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first and second arms of *Jones* '089 with different handles located at first and second locations, since *Jones* '632 teaches that two sets of handles provides versatility in accommodating individuals of different heights, or for slight variation in the way that the muscles are exercised.

7. Claims 39, 48, 60 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Jones* (US Pat. 5,554,089) in view of *Voris* (US pat. 6,394,937 B1). *Jones* '089 has been discussed above, and such discussion is incorporated herein. *Jones* '089 discloses the invention as claimed except for the handle at the first handle location/position and the handle at the second handle location/position comprises the same handle moved between the two locations/positions (claims 39, 48, 60 and 61).

*Voris* discloses an exercise machine comprising first and second pivoting arms 24, each arm having at least two handle locations 41 for a handle 32 to be moved to. The position of the handles is adjustable to accommodate the user's arm length (col. 2, lines 62-64). Adjustability,

where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the first and second arms of *Jones*'089 with handles moveable between first and second locations/positions, since *Voris* discloses that adjusting the position of the handles can accommodate the user's arm length, and since also adjustability, where desirable, is a modification that is within the skill of the art.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Webber* (US Pat. D444,190 S), *Carter* (US Pat. App. Pub. No. 2002/0107117 A1), *Fulks* (US Pat. App. Pub. No. 2002/0119871 A1), *Deola* (US Pat. App. Pub. No. 2003/0004043 A1), *Giannelli* (US Pat. App. Pub. No. 2003/0166439 A1) and *Gym 80* (DE 297 05 989 U1) disclose exercise machines having structure relevant to the invention as claimed.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTOR K. HWANG whose telephone number is (571) 272-4976. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn H. Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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